IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5559 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SALAUDIN ISMAIL JABAR - Petitioner(s)
Versus
DY.COLLECTOR - Respondent(s)

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Appearance :
MR MA KHARADI for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

CAV JUDGMENT

This petition has been preferred against the order dated 30th September,2002 passed by the respondent

(Annexure "A" to the memo of the petition) and consequential attachment notice dated 30th January,2006 issued by Deputy Collector, Stamp Duty Valuation, Panchmahal, Godhara (Anenxure “B” to the memo of the petition).

2. Learned advocate for the petitioner submitted that the order dated 30th September,2002 passed by the respondent was never served upon petitioner and, therefore, could not preferred an appeal within a period of 90 days under section 32-B of the Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958).

3. It is also vehementally submitted by the learned advocate for the petitioner that the order passed by the respondent (Annexure "A" to the memo of the petition) is absolutely a non-speaking order. No reasons have been assigned and straightaway conclusion has been arrived at by respondent authority. Learned advocate for the petitioner has also relied upon several judgments delivered by this Court whereby, it has been pointed out that if a non-speaking order passed by the respondent, the impugned order deserves to be quashed and set aside. Looking to the impugned order at Annexure “A”, it appears that no reasons have been assigned for fixing higher

market value. The price of the land in question was Rs.10,000/-, for which, conveyance deed was executed. The market price of the land in question arrived at by respondent was at Rs.7,30,000/-. How this figure has been arrived at, is not known to the petitioner. There is a total non-application of mind by respondent for arriving at, the market value of the land in question and, therefore, the order at Annexure "A" deserves to be quashed and set aside.

4. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondent submitted that the order passed by the respondent is true, correct and in consonance with the facts of the present case. The market value arrived at by the respondent is true and correct.

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, the impugned order dated 30th September,2002 passed by the respondent (Annexure "A" to the memo of the petition) and consequential attachment notice dated 30th January,2006 issued by Deputy Collector, Stamp Duty Valuation, Panchmahal, Godhara (Annexure “B” to the memo of the petition) require to be quashed and set aside, for the following facts and

reasons:-

(i) The impugned order dated 30th September,2002 passed by the respondent (Annexure “A” to the memo of the petition), is a non-speaking order. No reasons have been assigned for arrived at the market value of Rs.7,30,000/- instead of Rs.10,000/-, for which, the conveyance deed was executed. The figure of market value cannot come in the mind of the respondent from heaven or sky. There must be some basis. No such basis or calculation has been given for arriving at higher market value than the conveyance deed which was entered into by the petitioner. Looking to the nature of the order, which is at Annexure “A” to the memo of the petition, it is apparent that only 'one line reasoning' has been referred to the effect that “no defences have been raised by the petitioner”. By no stretch of imagination, this can be said to be a reasoned order. Burden of proof is upon respondent. “Burden of proof lies upon him who affirms; and not upon him, who denies”. It is the say of respondent authority that deed of conveyance is revealing lesser market value. It is the respondents, who are fixing higher market value. Therefore respondent has to justify their fixation of higher market value. Respondents cannot throw their burden, upon petitioner. Such type of reasoning

tantamounts to arbitrariness. Arbitrariness and equality are sworn enemies of each other. When arbitrariness is present, equality is always absent and where, equality is present, arbitrariness is always absent. Looking to the nature of order dated 30th September,2002 it seems that only one line reasoning is given that the market value is fixed at Rs.7,30,000/-. No reasons worth the name have been assigned for arriving at the market value of the land in question at Rs.7,30,000/-. It is the duty of the respondent to justify such a higher market value because it is their say that the market value of the land in question is at Rs.7,30,000/-. Thus, the impugned order at Annexure "A" is a non-speaking order.

(ii) It is also contended by the learned advocate for the petitioner that the respondent has not applied his mind and in cyclostyled format, the impugned order has been passed, wherein some gaps have been filled in and one and two sentences have been added. Such type of orders are violative of principle of natural justice. This Court has time and again delivered judgments and has quashed and set aside such type of order passed by the respondent. Learned advocate for the petitioner has also relied upon the judgment dated 11th August,2003 delivered by this Court in **Special Civil Application No.4434 of**

2003 and also a decision dated 3rd April,2002 rendered by this Court in the case of **Pradhyumanbhai Mohanlal Patel V/s. State of Gujarat** reported in **2003(1) GLR 454**. Learned advocate for the petitioner has also relied upon the judgment dated 22nd February,2005 delivered by Division Bench of this Court in **Letters Patent Appeal No.109 of 2005 in Special Civil Application No.16787 of 2004** as well as order dated 10th October,2005 passed by this Court in **Special Civil Application No.13729 of 2005 along with other group of matters** and judgement dated 5th December,2001 passed by this Court **(Coram:Hon'ble Mr.Justice R.R.Tripathi) in Special Civil Application No.654 of 2000 with Special Civil Application No.2794 of 2001** in the case of **Ambuja Metal Industries Pvt.Ltd. V/s. State of Gujarat** and has pointed out that the order dated 30th September,2002 passed by the respondent (Annexure "A" to the memo of the petition) deserves to be quashed and set aside. Looking to the impugned order and comparing it with the facts of the present case, I am also of the opinion that the impugned order is a non-speaking order since no reasons have been assigned for fixing the market value at Rs.7,30,000/-. The order dated 30th September,2002 at Annexure “A” to the memo of the petition is a cyclostyled type order in which blanks have been filled in. No reasons have been assigned for

filling in those blanks.

(iii) As per the Bombay Stamp (Determination of Market Value of property) Rules,1984, it is the duty of the Collector to provide the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him. Rule 4 of the Rules,1984 reads as under:-

> **"4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject matter of the instrument:-**
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> "4(i) on receipt of the instrument under sub-section (3) of Section 31 or sub-section (1) of section 31-A, the Collector of the District, where the thinks fit to do so, may for the purpose of his inquiry:-
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> (a) call for any information or record having bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;
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> (b) examine and record statement from any member of the public officer or the authority under the Central Government or State Government or any local authority, and
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> (c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.
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> (2) After examining the said information, records and evidence, if any, before him Collector of the District shall

> issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing alongwith all the evidence in support of such representation.
>
> (3) The Collector of the District shall after considering the representation, if any, received by him under sub-rule (2) pass an order determining the true market value and the proper payable on the instrument."
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> (emphasis supplied)

In view of the aforesaid provision, the basis for arriving at the market value ought to have been pointed out to the petitioner. Similarly, it is also the duty of the Collector to pass an order determining the true market value and the proper duty payable on the instrument. Looking to the facts of the present case, no such basis has been provided for arriving at the market value nor there is any reflection of the basis of the market value fixed by the Collector in the impugned order dated 30th September,2002. Reasons always reflect the mind of the lower authority. "Reasons" is the soul of the order. If the order is without reasons, the appellate authority cannot appreciate the order passed by the lower

authority and, therefore, in the facts of the present case, looking to the basic vices in the order passed by the respondent – the matter is being remanded to the Collector for a fresh decision in accordance with law.

(iv) The fixation of the market value is a complex phenomenon. When the party has purchased the land in question at Rs.10,000/-, the price, which is reflected in the conveyance deed, is not accepted by the respondent authority and the respondent authority has fixed the higher market value for the land in question, it is for the respondent authority to justify the higher market value. Reasons ought to have been assigned for arriving at the higher market value. Any lumpsum figure whichever comes in the mind of the respondent cannot be labelled as true and correct market value, unless reasons are assigned for arriving at such value. Without reasons, if the market value is fixed for the land in question, it leads to arbitrariness. The arbitrary usage of powers is also giving birth to discrimination and whenever there is discrimination, there is always a breach of right of equality. Without assigning any reasons, if any figure is to be fixed, it can be few Lacs more or it can be few Lacs less. Petitioner cannot be thrown at the speculation of the respondent authority. Several reported as well as

unreported judgments have been given by this Court, whereby, such type of cyclostyled orders have been quashed. However, it appears that the respondent authority is not paying any attention to such type of judgments and is repeatedly committing similar type of error and, therefore, citizens have to approach this Court again and again. Multifariousness of petitions could have been avoided by the respondent authority. In all the aforesaid judgments cited by the learned advocate for the petitioner, this Court has directed the Deputy Collector, Stamp Duty Valuation, to pass a speaking order, within time limit specified under the Act,1958. A cyclostyled order, with some gaps has been filled in and two sentences are added, which clearly reflects non-application of mind. On the contrary, it is the duty vested in the respondent to justify its say for higher market value for the land in question.

6. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial pronouncements referred to hereinabove, the impugned order dated 30th September,2002 passed by the respondent (Annexure "A" to the memo of the petition) is hereby quashed and set aside and consequential attachment notice dated 30th January,2006 issued by Deputy Collector, Stamp

Duty Valuation, Panchmahal, Godhara (Annexure “B” to the memo of the petition) is also hereby quashed and set aside. The matter is remanded to the respondent for taking a fresh decision and for passing a speaking order, as per the Act,1958 read with the Rules,1984, after giving an opportunity of being heard to the petitioner. The parties will be at liberty to make their submissions before respondent authority, which may be dealt with by the respondent while passing the order in accordance with law. Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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